FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.9623 of 2004

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.Nitin Pradhan for petitioner.

Mr.Nitin Deshpande for respondents.

CORAM : H.L GOKHALE &
SMT.R.S.DALVI, JJ.
DATED : 28th June 2005

P.C. :

1. Heard Mr.Nitin Pradhan in support of this petition. Mr.Deshpande, AGP, appears for the respondents.

2. The petitioner is operating some vehicles which are registered as Camper Vans in the State of Karnataka through the territory of Maharashtra on the basis of National Permit. The RTO, Maharashtra, found, on inspection, that the petitioner's Camper Van bearing No.KA-01/C-8779 had been constructed and adapted to provide 27 sleeping berths and

18 seats. This was against the allotted capacity as per the registration certificate of 30 sitting arrangements plus 2 seats. Obviously, this was in contravention of the registration certificate. This is what is stated in the additional affidavit of one Shri R.H. Kadam, Deputy Regional Transport Officer, Transport Commissioner's office, Bandra, Mumbai, affirmed on 15th December 2004. In view of these violations, fines were imposed. The respondents are relying upon the Circular dated 14th October 2004 of the Transport Commissioner requiring air-conditioning of the tourist vehicles and compliance with Rule 128. The petition seeks to challenge these requisitions. It prays that the respondents-authorities of the State of Maharashtra be restrained from refusing the entry to the petitioner's tourist vehicles

plying under the Tourist Permit.

3. Mr.Pradhan, learned Counsel appearing for the petitioner, submits that the petitioner is having a National Permit and is entitled to ply from Karnataka, Gujarat or other territories into the State of Maharashtra. He further submits that the requirements of a sleeper coach cannot be insisted on the petitioner's vehicles since there are no such requirements with respect to sleeper coaches laid down to any Central Rules. He has drawn our attention to an order passed by another Division Bench while sitting in Goa in **Writ Petition No.182 of 1999 on 31st January 2000 in the case of Kishore T. Naik Salgaonkar vs. State of Goa & ors.** That order also was with respect to the question of using the Camper Vans as sleeper coaches. The High

Court has admitted that petition but has declined to grant any interim relief. It is to be noted from that order that the petition was by a Bus Operator against the State of Goa and other Bus Operators and the High Court has noted in the order that no complaint had been made by or on behalf of the passengers on the ground of safety or inconvenience. It is, therefore, that although the petition was admitted, interim relief was refused. On the face of it, this order cannot carry the case of the petitioner any further inasmuch as in the instant case in the affidavit referred to above, there is a specific mention of the misuse of the Camper Van and there is a mention to the checking done by the Flying Squad and the Report dated 13th December 2004.

4. Mr.Pradhan submits that Article 301 of the Constitution

protects freedom of trade and commerce throughout the territory of India. It is, however, to be noted that Article 302 permits the Parliament to impose restrictions on trade, commerce and intercourse in public interest. Article 304(b) also permits reasonable restrictions in public interest. In the present case, the petitioner's vehicles are Camper Vans as claimed by the petitioner himself. The definition of a Camper Van is available in the Notification framed under the power of the Central Government under Section 41(4) of the Motor Vehicles Act. The earlier Notification of 19th June 1992 defined a Camper Van as follows:-

> " (c) "Camper Van" means a motor vehicle designed or constructed to provide living quarters for recreational camping or

travel use with direct walk through access to the living quarters from the driver’s seat. "

In the recent Notification issued on 5th November 2004, the definition has been elaborated and it reads as follows:-

"(c) "Camper van" means a special purpose M1 category vehicle constructed to include living accommodation which contains at least the following equipment:

Seats and table
Sleeping accommodation which may be converted from the seats
Cooking facilities, and
Storage facilities

This equipment shall be

rigidly fixed to the living compartment; however, the table may be designed to be easily removable. "

5. Now, as can be seen from these definitions, a Camper Van is meant for camping, recreation and tourist activities. As can be seen from the various facilities which are expected to be made available therein, it is not a regular passenger or a tourist vehicle. What is seen in the check carried by the State Government is that the vehicle was being used as a regular tourist bus with arrangement for sleeping etc. It is in these circumstances that the State Government has insisted upon the facilities which are otherwise required for a tourist vehicle under Rule 128. It is another matter that such a checking was not done in the State

of Karnataka or other places. That does not mean that the State of Maharashtra cannot enforce the law.

6. In the civil application filed by the petitioner, there is a reference to the State Government's Resolution dated 2nd December 2004. It refers to certain petitions regarding the Camper Vans to the Bench at Nagpur. It also records that such vehicles cannot be prevented entry in the State of Maharashtra. It, however, further states that the High Court has directed that if there are violations of other provisions of the Motor Vehicles Act or Rules, the necessary action can be taken. This is what has happened in the present case. We do not think, therefore, that we should interfere in the action taken by the RTO, Mumbai, which is perfectly justifiable. The

petition is, therefore, dismissed. The interim order will stand vacated.

7. Mr.Pradhan prays that the interim order be continued. What we find is that the requisitions insisted by the RTO, Mumbai, are in public interest and there cannot be any stay. Prayer for stay is rejected.

(H.L.GOKHALE, J.)

(SMT.R.S.DALVI, J.)